

SENSITIVE

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

2017 JAN -4 AM 8:57

FIRST GENERAL COUNSEL'S REPORT

MUR: 6858
DATE COMPLAINT FILED: July 28, 2014
DATE OF NOTIFICATION: Aug. 4, 2016
DATE OF LAST RESPONSE: Sept. 26, 2016
DATE ACTIVATED: Oct. 5, 2016
EPS:
ELECTION CYCLE: 2014
EARLIEST SOL: Nov. 1, 2018
LATEST SOL: Aug. 2, 2019

COMPLAINANT:

Delmin Garcia, President
Virgin Islands for Plaskett

RESPONDENTS:

Shawn Michael Malone
Malone People Action Committee-Delegate and
Glenridge A. Pole, Treasurer
Marcellino Ventura

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(2)
52 U.S.C. § 30101(12)
52 U.S.C. § 30102(e)(1)
52 U.S.C. § 30103(a)
52 U.S.C. § 30104(a), (b)
52 U.S.C. § 30118(b)(3)
52 U.S.C. § 30125(e)(1)(A)
11 C.F.R. § 100.11
11 C.F.R. § 102.12(a)
11 C.F.R. § 114.2(f)(2)(iv)
11 C.F.R. § 114.5
11 C.F.R. § 300.61

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

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I. INTRODUCTION

Complainant alleges that Shawn Michael Malone ("Malone"), a 2014 candidate in the Democratic primary for the Virgin Islands Delegate to the House of Representatives, and his principal campaign committee, Malone People Action Committee-Delegate and Glenridge A. Pole in his official capacity as treasurer ("the Committee"), used non-federal resources available to Malone as President of the Virgin Islands Territorial Legislature ("VI Senate") to support his federal campaign.¹ Complainant also alleges that the Committee failed to accurately report financial activity in its initial disclosure report. Finally, Complainant alleges that Malone retaliated against VI Senate staff members who supported his opponent. Respondents summarily deny the allegations.

For reasons set forth below, we recommend that the Commission dismiss the allegation that Malone, his campaign manager, Marcellino Ventura, or the Committee violated the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the use of nonfederal funds. We also recommend that the Commission dismiss the allegations that the Committee failed to report various campaign expenses in its initial disclosure report, but issue a letter of caution. We further recommend that the Commission find no reason to believe that Malone or the Committee violated the Act in connection with the alleged retaliation against VI Senate staff members. Finally, we recommend that the Commission close the file.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Malone, then President of the VI Senate, filed a Statement of Candidacy to run for Delegate on March 21, 2014, and he designated Malone People Action Committee-Delegate as

¹ Malone lost the 2014 Democratic primary election on August 2, 2014.

1 his authorized committee.² The Committee filed its Statement of Organization on the same
2 date.³ Malone publicly announced his candidacy on April 4, 2014.⁴ On April 15, 2014, the
3 Committee timely filed its 2014 April Quarterly Report covering the period from March 12,
4 2014, through March 31, 2014.⁵ The Committee did not report any financial receipts or
5 disbursements occurring before March 12, 2014.

6 Complainant first alleges that Malone, Ventura, and the Committee used inmates from a
7 Virgin Islands prison to set up for a campaign event in December 2013 in St. Croix, and used
8 members of Malone's legislative staff for unspecified federal campaign activity.⁶ Complainant
9 submits an affidavit from and pictures taken by Jonathan Buckney-Small, the husband of
10 Malone's Democratic primary opponent, who claims to have seen inmates from the VI's Golden
11 Grove Correctional Facility erecting a tent under Ventura's supervision.⁷ The pictures show a
12 large "Malone for Congress" banner hanging next to an assembled tent, and a person wearing
13 orange pants and a white shirt who appears to be assembling another tent.⁸ Four other people
14 appear in the pictures, one of whom Complainant identifies as Ventura. Complainant alleges that
15 Ventura told the other individuals to stop working and move behind a car when he noticed that

² Statement of Candidacy, Shawn Michael Malone (March 21, 2014);
https://www.facebook.com/Malone2014/about/?ref=page_internal.

³ Statement of Organization, Malone People Action Committee-Delegate (March 21, 2014).

⁴ <https://www.youtube.com/watch?v=lgTo5K0UFP8>.

⁵ <http://docquery.fec.gov/pdf/134/15951153134/15951153134.pdf>.

⁶ Compl. at 1-2 (July 28, 2014).

⁷ *Id.* at 1-2, Affidavit of Jonathan Buckney-Small.

⁸ Complainant states that Plaskett's husband observed the activity on or about December 29, 2013, however Respondents claim that the event occurred on December 26, 2013. Malone Resp. at 1 (Sept. 26, 2014) (joint response of Shawn Michael Malone, Malone People Action Committee-Delegate and Glenridge A. Pole, Treasurer, and Marcellino Ventura); Compl. at 1-2, Ex. A.

1 Buckney-Small was taking pictures.⁹ Although Respondents deny using prisoners at the event, a
2 blog news report claimed that a prison official acknowledged that prisoners who had been
3 "signed out" for one purpose had been redirected to work on the tent at the event.¹⁰

4 Complainant also alleges that Malone unlawfully increased the size of his VI Senate staff
5 by hiring five new employees to perform unspecified tasks in connection with his campaign.¹¹

6 Complainant further alleges that on November 1, 2013, Malone used VI Senate resources to
7 advertise his campaign by wearing a "Malone for Congress" T-shirt while making a televised
8 speech in his capacity as VI Senate President.¹²

9 Complainant further alleges that Malone misreported the campaign's financial activity by
10 omitting expenses for the following campaign activities:

- 11 • On November 1, 2013, Malone and campaign staff wore "Malone for Congress"
12 t-shirts during the televised speech mentioned above. Malone campaign staff also
13 flew a banner and gave away toys during the event.
- 14 • In December 2013 and January 2014, Malone campaign staff distributed more
15 than 500 towels during a festival.
- 16 • In February 2014, Malone and his campaign staff wore and distributed campaign
17 shirts at an Agricultural Fair.
- 18 • Malone's campaign used paid advertising to announce a February 5, 2014,
19 campaign meeting.
- 20
- 21
- 22
- 23

⁹ Compl. at 2, Ex. A.

¹⁰ A July 30, 2014 blog, which includes what appears to be similar pictures as the Complaint, reported that Bureau of Corrections Director Julius Wilson confirmed that Golden Grove inmates were signed out to "paint the firehouse" but were redirected to set up a campaign tent for Malone. *See* <http://www.realtalkusvi.com/home/inmategate>.

¹¹ Compl. 2, 3.

¹² *Id.* at 2.

- On February 10-14, 2014,¹³ Malone's campaign advertised campaign activities on several radio stations; those activities included food, entertainment, banners, travel, t-shirts, and rally towels, and other giveaways.

Complainant also alleges that Malone retaliated against VI Senate staff who did not support his campaign, including firing an employee who displayed a bumper sticker supporting his opponent and by withholding promised salary increases to other VI Senate staffers.¹⁴

Respondents summarily deny all of the allegations.

B. Legal Analysis

1. Use of VI Prison and VI Senate Resources

Federal candidates, their agents, and entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, federal candidates may not solicit, receive, direct, transfer, or spend funds "in connection with an election for Federal office" unless those funds are subject to the Act's reporting requirements, limitations, and prohibitions.¹⁵

Complainant alleges that Malone, Ventura, and the Committee violated the Act by using VI government resources in support of his campaign for Delegate. As a United States territory, the Virgin Islands are considered a State under the Act, and a State government is a person subject to the Act's contribution limit, which was \$2,600 in the 2014 election cycle.¹⁶

First, even if Malone and the Committee benefited from prisoners setting up a tent for the campaign event, the value of this labor was likely *de minimis*, thus, we recommend that the

¹³ Although the Complaint states that this activity took place during "February 2013," the available information suggests the events occurred in February 2014.

¹⁴ Id. at 2-3.

¹⁵ 52 U.S.C. § 30125(e)(1); 11 C.F.R. § 300.61. A "candidate" for "federal office" includes a candidate for Delegate to Congress. 52 U.S.C. § 30101(2), (3).

¹⁶ 52 U.S.C. § 30101(12); 11 C.F.R. § 100.11; MUR 5135 (George W. Bush) First General Counsel's Report at 4-6; Advisory Op. 1999-07 (Minnesota Secretary of State).

Commission dismiss this allegation against Malone, Ventura, and the Committee as a matter of prosecutorial discretion.¹⁷

Second, the allegation that Malone used VI Senate staff and/or contractors for his congressional campaign is vague and speculative. The Complaint does not identify particular employees and contractors involved, nor does it specify what type of campaign activity they are alleged to have conducted, and the Respondents summarily deny the allegation. Given the vagueness of the claim, we recommend that the Commission dismiss this allegation against Malone and the Committee.¹⁸

Third, the allegation that Malone wore a "Malone for Congress" t-shirt during a televised official speech on November 1, 2013, while more specific, is also denied by Respondents. We have been unable to locate any information to confirm or refute this allegation, or to establish what value could be assigned to wearing a campaign shirt during this speech. Accordingly, we also recommend that the Commission dismiss this allegation.

In sum, we recommend that the Commission dismiss the allegation that Shawn Michael Malone, Marcellino Ventura, or Malone People Action Committee-Delegate and Glenridge A. Pole in his official capacity as treasurer violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 300.61

2. Alleged Reporting Violations

Complainant alleges that the Committee misreported its financial activity by omitting receipts or disbursements for campaign activities and events, including the production of

¹⁷ See *Heckler v. Chaney*, 470 U.S. 821 (1985); Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 51 (March 16, 2007) at 12546.

¹⁸ Statement of Reasons, Commr's McDonald, Mason, Sandstrom, Smith, & Thomas, MUR 4960 (Hillary Rodham Clinton for US Senate Exploratory Committee) (Dec. 20, 2000) (dismissing allegation based on its speculative nature and direct refutation).

1 campaign paraphernalia and advertising, which occurred before Malone filed his Statement of
2 Candidacy.

3 The first transaction shown on the Committee's 2014 April Quarterly report occurred on
4 March 17, 2014. However, the Complaint documents a December 26, 2013, event with pictures
5 showing a large "Malone for Congress" banner displayed next to a tent. The respondents deny
6 that they failed to report campaign activities, but they admit that an event occurred on December
7 26, 2013.

8 These facts raise questions whether the Committee completely and accurately disclosed
9 its receipts and disbursements on the 2014 April Quarterly Report. Malone appeared to have
10 been campaigning in late December 2013, but the April Quarterly report does not show any
11 financial activity before mid-March 2014. Even if Malone were said to be testing the waters for
12 a potential campaign, his committee was still required to include all receipts and disbursements
13 for such activities on the first disclosure report it filed with the Commission.¹⁹

14 Even so, the information before the Commission suggests that the Committee's
15 expenditures from late December 2013 to early March 2014, which are alleged to include items
16 such as giveaway t-shirts and towels, food and drink, and some advertising and labor costs, were
17 likely modest. Accordingly, we recommend that the Commission dismiss the allegation that the

¹⁹ 52 U.S.C. §§ 30103(a), 30104(a), (b); 11 C.F.R. §§ 100.72, 100.131. The "Malone for Congress" banner is evidence that Malone already had decided to run for Delegate by December 2013. However, an individual only becomes a "candidate" under the Act if he or she receives contributions or makes expenditures in excess of \$5,000. 52 U.S.C. § 30101(2). If Malone or the Committee raised or spent \$5,000 prior to March 2014, Malone may have triggered candidacy at that time, and may have been required to file his statement of candidacy much earlier than March 21, 2014. However, there is no information that establishes Malone or the Committee actually spent \$5,000 in connection with such activities prior to filing his Statement of Candidacy. Consequently, there is no information indicating that the Committee was required to file a report that pre-dated the 2014 April Quarterly Report.

1 Committee violated 52 U.S.C. § 30104(a) and (b) by failing to accurately and completely report
2 receipts and disbursements on the 2014 April Quarterly Report, but issue a letter of caution.²⁰

3 **3. Coercion Allegation**

4 Complainant generally alleges that Malone caused an unidentified VI Senate employee to
5 be fired for displaying a bumper sticker supporting his opponent Plaskett, and intimidated and
6 retaliated against other VI Senate employees who supported Plaskett's campaign by withholding
7 promised salary increases. Respondents deny these allegations. The Complaint neither identifies
8 the employees who were fired or intimidated nor provides details of the retaliatory acts. In any
9 case, it is not clear that such retaliatory actions, while distasteful, would constitute violations of
10 the Act. The Act and Commission's regulations explicitly prohibit only two types of coercion:
11 (1) coercion of contributions to a separate segregated fund (SSF), and (2) coercion involving
12 facilitation of contributions to a political committee.²¹ The Complaint does not allege that
13 Malone attempted to coerce contributions to the Committee or retaliated against employees for
14 failing to contribute to the Committee. Accordingly, we recommend that the Commission find
15 no reason to believe Malone or the Committee violated the Act in connection with the alleged
16 coercion or retaliation against VI Senate staff who supported his opponent.

²⁰ See *Heckler v. Chaney*, 470 U.S. 821 (1985); Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 51 (March 16, 2007) at 12546. The Committee appears to be inactive – its last disclosure report shows zero receipts and disbursements and minus \$239.51 cash on hand for the period ending March 31, 2016. Committee 2014 April Quarterly Report (Apr. 16, 2016) at <http://docquery.fec.gov/pdf/190/201604159012565190/201604159012565190.pdf>. The Committee has not filed the 2016 July and October Quarterly Reports and has been notified of the failures. See RFAI dated August 3, 2016 at <http://docquery.fec.gov/pdf/143/201608030300056143/201608030300056143.pdf>; RFAI dated November 1, 2016 at <http://docquery.fec.gov/pdf/411/201611010300067411/201611010300067411.pdf>.

²¹ See 52 U.S.C. § 30118(b)(3); 11 C.F.R. § 114.5 (prohibiting SSFs from using funds obtained through coercion); 11 C.F.R. § 114.2(f)(2)(iv) (prohibited facilitation includes using coercion to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee).

IV. RECOMMENDATIONS

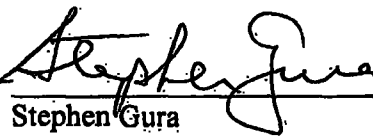
1. Dismiss the allegation that Shawn Michael Malone, Marcellino Ventura, or Malone People Action Committee-Delegate and Glenridge A. Pole in his official capacity as treasurer violated 52 U.S.C. § 30125 by using nonfederal funds in connection with a federal election.
2. Dismiss the allegations that Shawn Malone People Action Committee-Delegate and Glenridge A. Pole in his official capacity as treasurer violated 52 U.S.C. § 30104(a) and (b) by failing to report campaign receipts and disbursements, and issue a letter of caution.
3. Find no reason to believe Shawn Michael Malone or Malone People Action Committee-Delegate and Glenridge A. Pole in his official capacity as treasurer violated the Act by coercing or retaliating against VI Senate staff.
4. Approve the attached Factual and Legal Analysis.
5. Approve the appropriate letters.
6. Close the file.


Lisa J. Stevenson
Acting General Counsel

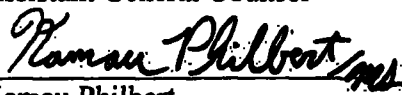
Kathleen M. Guith
Acting Associate General Counsel
For Enforcement

1.3.17

Date


Stephen Gura
Deputy Associate General Counsel
For Enforcement


Mark Shonkwiler
Assistant General Counsel


Kamau Philbert
Attorney